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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,721	11/28/2001	Robert Hoeller	030705-171	7914

7590

08/27/2003

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EXAMINER

NERBUN, PETER P

ART UNIT	PAPER NUMBER
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3765

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DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Applicant(s) Hoeller	<i>CH</i>
	Art Unit 3765	
	Applicant N 09/994,721	
	Examiner Peter P Nerbun	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 November 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-45 is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 10 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☒ None of the CERTIFIED copies of the priority documents have been:
1. ☒ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- |   |  |
|---|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 20) <input type="checkbox"/> Other: _____.                                   |

Claims 11-45 are allowed.

The specification is objected to for containing errors in sentence structure. On page 1, paragraph [0002], lines 1-2, applicant recites a process and apparatus "for adjusting clearing limits, defects in the yarn being cut out and a clearing limit separating defects which are to be cut out from defects which are not to be cut out.". According to applicant's disclosure the clearing limits are not themselves defects in the yarn as recited in the above quoted section of the specification. Rather the clearing limit is a dividing line as shown in the disclosure at 45, Fig. 9 of the drawings. The clearing limit separates defects which are to be cut out from defects which are not to be cut out. To overcome this objection, applicant should delete the words "clearing limits, defects in the yarn being cut out and" on page 1, paragraph [0002], lines 1-2 of the specification.

Claims 1-6 are objected to for containing a grammatical error. In claim 1, line 3, applicant recites "the process comprising the steps of:". In this recitation "the steps" should be changed to --the step-- since claim 1 recites only the single step of producing displays of defects in an end product that make an effect of the defects in the end product visible.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 1-3, the claim language contains errors in sentence structure that would prevent one of ordinary skill in the art from being able to apprise the scope of the claim. In particular, applicant recites a process "for adjusting clearing limits, defects in the yarn being cut out and a clearing limit separating defects which are to be cut out from defects which are not to be cut out,...". According to applicant's disclosure the clearing limits are not themselves defects in the yarn as

recited in the above quoted section of claim 1. Rather a clearing limit is a dividing line as shown in the disclosure at 45, Fig. 9 of the drawings. The clearing limit separates defects which are to be cut out from defects which are not to be cut out. To overcome this rejection, applicant should delete the words "clearing limits, defects in the yarn being cut out and" in claim 1, lines 1-2.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hoeller (U.S.P. 5,671,061). The patent to Hoeller discloses a process comprising the step of starting from a clearing limit, producing displays of defects in an end product that make an effect of the defects in the end product visible (see col. 3, lines 56-65 which states that the signal from the measuring member 4, Fig. 1 and/or the signal processed by the evaluation and operating unit 2, for example the spectrogram of Fig. 3, are used to generate an image of the woven or knitted fabric produced from the examined yarn on the video display unit 7. Col. 3, lines 56-65 further state that this image directly shows the attendant the effects of yarn faults on the finished product. With regard to the step of producing displays of defects as "starting from a clearing limit", note col. 3, lines 15-21 and col. 4, lines 22-25 of the Hoeller patent which state that spikes or "chimneys" in the spectrogram indicate a fault and that "selective evaluations" of the data are possible by indicating only "individual chimneys of the spectrogram". Thus the display of the faults

may start from the clearing limit that is defined by the height of the lowest chimney (shown as the rightmost dark shaded section in the top chart of Fig. 3). It is noted that applicant recites a process for adjusting clearing limits in the preamble of claim 1.

Statements in the preamble of a process claim reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the recited purpose or intended use results in a manipulative difference between the claimed invention and the prior art. If so, the recitation serves to limit the claim. See, e.g., *In re Otto*, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963). In the instant application the intended purpose of adjusting clearing limits does not result in a manipulative difference between the claimed invention and the prior art reference to Hoeller (U.S.P. 5,671,061) since adjusting a clearing limit does not result in the manipulation of any physical entity. Accordingly the recitation of a process for adjusting clearing limits in the preamble of claim 1 does not serve to limit the claim.

Claim 8 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and to overcome the rejection under 35 USC 112, second paragraph as set forth hereinabove.

If applicant has any questions regarding the instant Office action, the examiner may be contacted at (703) 308-0955 from Monday to Friday between 10:00AM to 7:30PM during alternate weeks and from Monday to Wednesday between 10:00AM to 7:30PM on the remaining alternate weeks. At other times between Monday and Friday applicant may

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contact the examiner's supervisor John Calvert at (703) 305-1025.

Peter Nerbun

August 21, 2003

A handwritten signature in black ink, reading "Peter Nerbun". The signature is written in a cursive style with a large, looping "P" and a trailing flourish.

Peter Nerbun  
Primary Examiner